

IN SENATE OF THE UNITED STATES.

JUNE 29, 1848.

Submitted, and ordered to be printed.

Mr. JOHNSON, of Louisiana, made the following

REPORT:

[To accompany joint resolution S. R. No. 31.]

The Committee on Private Land Claims, to whom were referred the report of the Solicitor of the Treasury, and sundry documents, respecting the claims of the Rev. Benedict Madeore, vicar general of the Catholic church of Florida, and of the Catholic congregation of St. Augustine, Florida, to certain lots or tracts of land in or near said city, report:

That the committee approve of the suggestion of the Solicitor of the Treasury, that these claims should be submitted to arbitration, and, therefore, report a joint resolution authorising the same.

The submission should be—

1. As to the *title* of the claimants to the respective lots or tracts of land, and buildings specified in their memorials, whether legal or equitable.

2. As to the value of said property, and of each portion thereof, at the time of the delivery thereof to the United States, and particularly of the buildings thereon at that time.

3. The value of the use and occupation by the United States since.

4. The cost and the value of the improvements since placed on each separate portion of said property.

5. The present condition and value of each separate portion of said property.

6. If said property, or any part thereof, is decided to belong to said claimants, or either of them, the amount that the United States should, in equity and justice, pay to such claimant for the relinquishment of the title thereto; and to whom the same should be paid, and for whose or what use.

7. If the property should be given up to said claimants, the amount, if any, that should be paid to the United States for said improvements.

The committee further report that the following papers, not heretofore printed, relating to said claims, should be printed for the use of the Senate, according to its order:

- I. Letter of the Solicitor of the Treasury to Hon. G. M. Dallas, enclosing reports and papers, June 23, 1848.
- II. Report of Solicitor, dated June 21, 1848, to Senate.
- III. Circular of Solicitor to departments, asking for information.
- IV. Letter of Secretary of State to Solicitor, May 15, 1848.
- V. Acting Secretary of the Treasury to Solicitor, May 11, 1848.
- VI. Commissioner of General Land Office to acting Secretary of the Treasury, May 8, 1848.
- VII. Secretary of War to Solicitor, May 3, 1848.
- VIII. Engineer office to Secretary of War, May 2, 1848.
- IX. Secretary of Navy to Solicitor, June 3, 1848.
- X. Surveyor General of Florida to Solicitor, May 31, 1848.
- XI. U. S. Attorney for northern district of Florida to Solicitor, dated Washington, June 13, 1848.

No. 1.

OFFICE OF THE SOLICITOR OF THE TREASURY,
June 23, 1848.

SIR: I have the honor to enclose you a report, under the resolution of the Senate, of the 21st of March last, on the claim of the Rev. B. Madeore, to certain lands occupied by the government at St. Augustine, Florida.

I have the honor to be, very respectfully, your obedient servant,
R. H. GILLET,
Solicitor.

Hon. GEORGE M. DALLAS,
Vice President and President of the Senate.

No. 2.

OFFICE OF THE SOLICITOR OF THE TREASURY,
June 21, 1848.

To the Senate of the United States:

On the 18th of April, I received a resolution of the Senate in the following words, to wit:

IN THE SENATE OF THE UNITED STATES.—March 21, 1848.

Resolved, That the memorial of B. Madeore, vicar general, and the memorial of the trustees and members of the Catholic church at St. Augustine, Florida, and all the accompanying papers, be printed for the use of the Senate; and that the secretary of the Senate cause the translations of papers filed to be corrected and verified before the same are printed; and all said documents to be transmitted to the Solicitor of the Treasury, who is directed to ex-

amine the same, and investigate said case; and procure copies of all documents and papers relating thereto, in the public departments or offices, and other testimony that he can obtain, relating to the title of the United States to the property claimed, and communicate the same to the Senate; and make report, as to the merits of said case, as early as practicable, during the present session.

Attest:

ASBURY DICKINS,
Secretary.

A circular, a copy of which is annexed, was immediately addressed to the heads of the several departments, calling for any information within their control. Similar calls were made upon the United States district attorney and surveyor general of Florida. Their answers are annexed. By reference to the petition, it will be seen that the Rev. Mr. Madeore claims certain real property at St. Augustine, in Florida, which is now occupied as military barracks. The question submitted is purely one of title. The evidence before me shows that prior to the destruction of the king's barracks, in 1792 or 1795, the Catholic church establishment was in the occupancy of the property in question. From that time until 1821, this property was principally occupied by Spanish troops, and since then under the direction of the War Department, for military purposes.

1. The first question in the case is, did the Spanish government, prior to the use of the premises for military purposes, invest the clergy with title to the premises? Long possession by the latter may be said to raise the presumption of title in their favor.

2. In the second place, possession from 1792, or thereabouts, to 1821, by the Spanish government, and by ours since—a period of half a century—may be said to repel this presumption, and raise one in favor of the government title. Then it becomes material to know in what character the Spanish government entered in 1792, whether as owner or tenant.

Without an intimate knowledge of Spanish laws and usages, in relation to churches and church property, I cannot properly pass upon the first question. The second must materially depend upon facts which are not before me, but which can probably be fully ascertained at St. Augustine.

If the Spanish authorities entered as purchaser, or owner, in 1792, and held as such, the present claimant can have but little to rest upon. But if it entered as a tenant, under the clergy, it would be an admission of paramount title in the latter, which must prevail, until the United States prove a superior title in themselves. But there are not facts enough before me to enable me to determine this question. The testimony is all *exparte*, and taken apparently without much professional skill. At best it can only raise presumptions, without establishing facts. I cannot believe it just, either towards the claimant or the United States, that the question of title should be disposed of, and Congress act upon the present testimony. The claim of Mr. Madeore to be the lawful representative

of the church title, I have no reason to doubt; but it is not fully and legally established by the evidence. This, it is fair to infer, he can easily establish. The question of title, from the application before the Senate, is not the only one necessary to be considered in this case. If the title of the claimants is held to be good—if the government wishes to retain the property, its value, as well as its past use, and the extent of improvements upon it by the United States, becomes important. I would respectfully suggest that this whole subject be referred to some person well versed in Spanish laws and customs in relation to public domain and church property, and who can collect all the testimony bearing upon the questions involved, and report it with his opinion thereon, to the end that Congress may act with a full knowledge of all the essential circumstances connected with the case.

The papers sent me from the Senate are herewith returned.

R. H. GILLET,
Solicitor.

No. 3.

OFFICE OF THE SOLICITOR OF THE TREASURY,
April 18, 1848.

SIR: I have the honor to enclose you a copy of a resolution of the Senate, this day received, concerning the claim interposed by the Rev. Benedict Madeore, vicar general of Florida, to certain property now occupied for military purposes by the United States, at St. Augustine, Florida. In order that you may the better understand the nature and extent of the claim, I also enclose you a copy of Senate report No. 99, dated March 21st, 1848. You are respectfully requested to furnish me, as early as practicable, "copies of all documents and papers relating thereto," and all other information applicable to the case, in your department, or in offices under your control, in order that I may be able to make the report contemplated in the resolution.

Respectfully, your obedient servant,

R. H. GILLET, *Solicitor.*

To the SECRETARY OF STATE.

[The same was addressed to the heads of all the departments.]

No. 4.

DEPARTMENT OF STATE,
Washington, May 15, 1848.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th ultimo, enclosing copy of a resolution and a printed document of the Senate, of the 21st March last; and requesting to

be furnished with copies of all documents and papers in the Department of State relating to the claim of the Rev. Benedict Madeore, vicar general of Florida, to certain property now held by the United States, at St. Augustine, to which the resolution of the Senate refers.

In reply, I have to inform you that, after a diligent search, no papers, connected with the claim in question, have been found on file in this department.

I am, sir, respectfully, your obedient servant,

JAMES BUCHANAN.

R. H. GILLET, Esq.,

Solicitor of the Treasury.

No. 5.

TREASURY DEPARTMENT,

May 11, 1848.

SIR: In reply to your letter of the 18th ultimo, asking for copies of such papers, and other information, as this department might be able to furnish, touching the claim interposed by the Rev. Benedict Madeore, vicar general of Florida, to certain property now occupied for military purposes by the United States, at St. Augustine, Florida, I enclose a copy of a communication from the Commissioner of the General Land Office, under date of the 8th instant, upon the subject of the claim in question.

Agreeably to the commissioner's suggestion, I have directed him to call on the surveyor general, at St. Augustine, to furnish you with whatever information he may have touching this claim; and I would suggest that you should make a similar application to the United States district attorney for the northern district of Florida.

Printed Senate report No. 99, 1st session 30th Congress, is herewith returned.

Very respectfully, your obedient servant,

McC. YOUNG,

Acting Secretary of the Treasury.

R. H. GILLET, Esq.,

Solicitor of the Treasury.

No. 6.

GENERAL LAND OFFICE,

May 8, 1848.

SIR: I had the honor to receive from you the letter of the 18th ultimo, from the Solicitor of the Treasury, with a copy of the Senate's resolution of the 21st March last, and the printed Senate report, No. 99, 1st session, 30th Congress, relative to the memorial

of the vicar general of the Catholics of Florida, and pastor of the Catholic church of St. Augustine, Florida.

These papers I herewith return; and, pursuant to your call of the 6th instant, as endorsed on Solicitor Gillet's letter, I beg leave to refer to my communication of the 29th February, 1848, to the Hon. Henry Johnson, Senate United States, printed on pages 46 and 47 of said Senate report, No. 99, herewith, as containing, with the references, all the information in my possession in the case.

I respectfully suggest, however, that it would be proper to enclose to the surveyor general at St. Augustine, a copy of the Senate report, and also one to the United States district attorney for the eastern district of Florida, and to make a call on those officers for such information and data as they may be able to furnish touching the title and merits of the case.

With great respect, your obedient servant,

RICHARD M. YOUNG,

Commissioner.

McCLINTOCK YOUNG, Esq.,

Acting Secretary of the Treasury.

No. 7.

WAR DEPARTMENT,
Washington, May 3, 1848.

SIR: I have the honor to return herewith the papers referred by you to this department on the 18th ultimo, for information respecting the merits of the claim of the trustees of the Catholic church of St. Augustine to certain property occupied for military purposes. The report of the acting chief engineer, herewith, will inform you that there is no information on the subject of any value on the files of this department.

Very respectfully, your obedient servant,

W. L. MARCY,

Secretary of War.

To R. H. GILLET, Esq.,

Solicitor of the Treasury.

No. 8.

ENGINEER DEPARTMENT,
Washington, May 2, 1848.

SIR: In reply to the letter of the Solicitor of the Treasury, of April 18, 1848, returned herewith, asking for copies of all documents and papers relating to the claim interposed by the Rev. Benedict Madeore, vicar general of Florida, to certain property now occupied for military purposes by the United States, at St. Augus-

tine, Florida, and all other information applicable to the case, I have the honor to report:

That, after a careful examination of the papers in this office, and consultation with the Solicitor for information, there appear to be no documents or papers in this office referring to the claim, of any value in determining its value.

Very respectfully, your most obedient,

FRED. A. SMITH,
Captain Engineers, A. C. E.

Hon. W. L. MARCY,
Secretary of War.

No. 9.

NAVY DEPARTMENT, *June 3, 1848.*

SIR: In reply to your letter of the 18th of April, enclosing a copy of a resolution of the Senate in relation to a claim of the Rev. Benedict Madeore, you are informed that there are no papers in the Navy Department concerning the subject of inquiry.

I am, very respectfully, your obedient servant,

J. Y. MASON.

R. H. GILLET, Esq.
Solicitor of the Treasury.

No. 10.

SURVEYOR GENERAL'S OFFICE,
St. Augustine, May 31, 1848.

SIR: By the last mail I was placed in receipt of the commissioner's letter of 12th instant, pursuant to a letter from the acting Secretary of the Treasury, of the 11th instant, and accompanied by a printed report, made to the Senate of the United States by Mr. Johnson of Louisiana, dated March 21, 1848; and also (a copy of a copy) of the Senate's resolution, of same date, requiring the report and documents accompanied to be transmitted to you, with directions "to examine the same and investigate said case, and procure copies of all documents and papers relating thereto in the public departments or offices, and other testimony that he can obtain relating to the title of the United States to the property claimed, and communicate the same to the Senate, and make report as to the merits of said case, as early as practicable, during the present session."

The commissioner instructs me to communicate, as early as practicable, to you such information and data as I may be able to furnish on this claim, to aid you in complying with the resolve of the Senate aforesaid. In compliance, I respectfully advise you that

early in the year 1821 I was clothed with powers, by Major General Andrew Jackson, under authority derived from Colonel Monroe, then President of the United States, to receive East Florida from the Spanish authorities, which I accomplished, as commissioner, on the 10th day of July, 1821, and immediately thereafter transmitted to the Secretary of State, at Washington, copies of the correspondence, the manifest of reception, with copies of the documents, inventories and plans therein enumerated (see laws of the United States, volume 6, by John B. Colvin, published 1822, page 638.) The property received, as thus delineated, was considered by the Spanish authorities, under their instructions, as the property of the crown, never alienated, and embraced by the treaty of 1819; and if this was not the case, would they have unnecessarily incurred the anathema set forth in a document embodied in the Senate report, chapter 11, page 33? I have carefully read the report and documents, and, to prevent misconstruction of the Rev. Mr. Madeore's memorial, in the outset I state that the inventories and plans transmitted will show minutely what were taken and held as the property of the United States. The Rev. Mr. Crosby, then the spiritual father of the Catholic church here, was urged by me to remain in charge of the church and take care of his flock, assuring him that the government would never disturb them in their occupancy; and, after considering the subject, said he would take my advice and remain. Again, if the crown had granted to the church the eminent domain, why was it deemed necessary to make sale thereof to a Mr. Jesse Fish? and, as it appears from the printed report, without paying any compensation therefor, would not the title, under British rule, have been more secure than under a fictitious sale? Admit, for a moment, that Spain had granted to the church the eminent domain, where is the evidence of such grant? and if existing, why such palpable violation of it by her high functionaries? If not granted to the church, but transferred to the United States, under the treaty of 1819, as crown property, then apply the principle established by the Congress of the United States, found in State Papers, (Duff Green, printer,) vol. 4, page 674, case No. 557, from which I quote the following:

"Individual property may, by virtue of the *eminent domain* residing in the sovereign, be disposed of without the consent of the owner, and the citizen or subject affected thereby can only look for compensation to the government granting, whilst the thing granted is absolutely disposed of, and no obligation rests upon the government to which it is transferred."

When I reached Pensacola, whither I proceeded on the 14th of July, 1821, I made report to General Jackson, furnishing him, also, with the manifest of reception, with copies of the documents, inventories, and plans, and I am impressed with the belief that I have, among my old papers, the originals filed at my residence in Middle Florida, not accessible till I shall make a contemplated visit in October. By application to the engineer department at Washington I presume you can obtain the necessary information of the amount and character of the ruins upon which that department

(or quartermaster's) built the present United States barrack, at very great expense. The site is without the last street in the plan of the city, on the common, south of which stands the magazine received by me. Under instructions from the department, some years since, I had a survey made of this city and environs by sworn deputy surveyors, a copy of which was transmitted to the General Land Office, one other to the city authorities here, with a request to convene the citizens with a view to test its correctness on the subject of individual rights, apart from that of the rights of the general government, and I was pleased to learn that it gave universal satisfaction.

If there are any points of information touching this subject with which I am supposed to be informed on, by your stating them you shall have a prompt reply.

I have the honor to be, very respectfully, your most obedient servant,

ROBERT BUTLER,
Surveyor General.

To the SOLICITOR OF THE TREASURY.

No. 11.

WASHINGTON CITY, June 13, 1848.

SIR: Your letter of the 15th ult., enclosing a report made by a committee of the United States Senate on the petition of the Rev. Benedict Madeore, vicar general, &c., asking information on the subject of the petition, was not received by me until my arrival here on the 11th of the present month, having been forwarded to me from Florida.

Never having had my attention directed to the investigation of the title of the United States, to the premises in question, I cannot, at this time, give any information or opinion on the subject.

If, however, it is deemed necessary I can at once repair to St. Augustine and devote myself to the investigation of the title, and to the collection of such facts as will be furnished by the Spanish records, in the office of archives, and the old inhabitants of the town.

I have the honor to remain, sir, very respectfully, your obedient servant,

C. C. YOUNG,
United States Attorney.

To R. H. GILLET, Esq.
Solicitor of the Treasury.

